

In the United States Court of Federal Claims

Case No. 96-408C
Filed: May 21, 2009
FOR PUBLICATION

INNOVAIR AVIATION, LIMITED

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Fifth Amendment, Takings, Damages; Just
Compensation; Discount Rate; Interest;
Present Value Calculation; Discounted Cash
Flow

Ty Cobb, Hogan & Hartson, Washington, D.C., with whom were *H. Christopher Bartolomucci* and *Audrey E. Moog*, of counsel, for Plaintiff.

Sheryl L. Floyd, United States Department of Justice, Civil Division, Commercial Litigation Branch, Washington, DC, with whom were *Jeanne E. Davidson*, Director, and *Michael F. Hertz*, Acting Asst. Att’y Gen., for Defendant.

OPINION

SMITH, Senior Judge:

After careful review and consideration, Defendant’s Motion for Reconsideration is hereby **DENIED**. Defendant raises several issues that the Court has already adequately addressed and will not address again. However, the Court will clarify and amend page eleven of its Original Opinion, in *Innovair Aviation, Ltd. v. United States*, Case No. 96-408, dated August 22, 2008, with the following highlighted material added to the text as noted:

The projected cash flow of Innovair during the period of 1992 - 1998, as detailed above, should be discounted to find the TLA’s 1992 value. Without the discount, this award would be a lost profits award. The Court has discounted cash flows using an annually compounded rate before. *See Whitney Benefits, Inc. v. United States*, 30 Fed. Cl. 411, 416 (1994); *Whitney Benefits, Inc. v. United States*, 18 Cl. Ct. 394, 410 (1989). In *Whitney Benefits*, the Court found that “in order to award just compensation, the amount of the judgment should be determined using comparable interest rates. Because the discount rate used to determine the amount of the judgment incorporated compound interest, compound interest should be awarded on that judgment to accurately reflect the value of just

compensation.” *Whitney*, 30 Fed. Cl at 416. Following the logic and reasoning of *Whitney Benefits*, a 10% discount rate shall apply, compounded annually, to discount the cash flow to 1992. The Court arrives at this figure and finds that it is appropriate to use this rate based upon a determination of the collective risk factors in this case, including the risk of selling. *Id.*

It is so ORDERED.

/s/Loren A. Smith
LOREN A. SMITH,
Senior Judge